INDEX

Opinions Below 1

Jurisdiction 2

Statement 2

Argument 3

Conclusion 5

Table of Authorities

Cases

Hunter vs. A., T. & S. F. Ry. Co., 171 F. 2d 594 (1948), cert. den. under Shepherd et al. vs. Hunter, 337 U. S. 916 ..... 3, 4, 5

Nord vs. Griffin, 86 F. 2d 481 (1936), cert. den. 300 U. S. 673 ..... 4, 5

Shepherd et al. vs. Hunter, 337 U. S. 916 (see Hunter vs. A., T. & S. F. Ry. Co.) 3, 4

Statute

Railway Labor Act, 45 U. S. C. A., 153 First (j) 4

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D., 1949.

No. 180.

BROTHERHOOD OF RAILROAD TRAINMEN, A VOLUNTARY UNINCORPORATED ASSOCIATION, PETITIONER,

VS.

HAROLD H. TEMPLETON, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, A CORPORATION, AND PANHANDLE AND SANTA FE RAILWAY, COMPANY, A CORPORATION, RESPONDENTS.

BRIEF OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY AND PANHANDLE AND SANTA FE RAILWAY COMPANY, DEFENDANTS-RESPONDENTS, IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI AND IN OPPOSITION TO THE BRIEF SUPPORTING SAID PETITION.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

OPINIONS BELOW.

The opinion of the United States Court of Appeals for the Eighth Circuit (R. 623-640) is reported in 181 F. 2d 527. The District Court's Findings of Fact and Conclusions of Law (R. 63-76) are reported in 84 F. Supp. 162.

JURISDICTION.

The jurisdictional requisites are adequately set forth in the petition.

STATEMENT.

This case decided that certain awards rendered by the National Railroad Adjustment Board are void because notice of the proceedings before the Board had not been given to employees involved in the dispute, and it further decided that the agreement to apply such awards is also void (R. 639).

Respondent controverts the summary statement of the matters involved in the case as presented by petitioners. The case does not involve the jurisdiction of a federal Court to abrogate collective bargaining agreements, nor does the case in any manner present a question concerning the jurisdiction of a federal court to interpret a collective bargaining agreement between a carrier and its employees. This case is devoid of any question relating to a judicial review of awards of the Adjustment Board. On the contrary it presents the fundamental question whether any award which the Adjustment Board has made is valid unless the Board has given the statutory notice.

The findings of fact made by the U. S. District Court were carried forward verbatim in the opinion of the Eighth Circuit Court of Appeals (R. 625-635), and any attempt to summarize those findings would be inadequate unless unduly extended.

ARGUMENT.

The determination of this suit depends on the facts of the case as found by the Court below and on the practically parallel case of *Hunter* v. *A., T. & S. F. Ry. Co.*, decided by the U. S. Court of Appeals for the Seventh Circuit, 171 F. 2d 594 (1948), cert. den. *Shepherd et al.* v. *Hunter*, 337 U. S. 916.

The U. S. District Court made extensive findings of fact. These were quoted in their entirety (R. 625-635) by the Court of Appeals for the Eighth Circuit, which held not only that the questioned findings were supported by substantial evidence, but that "the findings as a whole are sustained by the evidence and must be taken as established for decision on the appeal" (R. 635).

The nature of this case is of the utmost simplicity and therefore we find it unnecessary to subdivide our argument in support of the decisions below. No argument that we could make would be as clear and convincing as the following paragraph from the opinion of the Eighth Circuit (R. 639):

> "The many other arguments and contentions very ably presented for B. of R. T. have been considered, but it does not appear that the trial court was clearly in error as to any of its findings and we hold that on those findings the court rightly concluded that the awards made by the Board were void as to the plaintiff's class of workmen for want of notice to them; that the agreements subsequently made were merely to apply and implement the awards and did not evidence new or modified collective bargaining agreements between the railroads and the B. of R. T. and did not destroy or terminate the rights of the plaintiff class as they existed prior to the awards. The trial court was not in error in issuing its injunction which

was properly narrowed in scope and limited in its effect as stated in the injunctional order as follows:

" 'It is further ordered, adjudged and decreed that the effect of this injunction is to place the parties in the same legal position toward each other which they occupied on September 15, 1945, and as though Awards 6635 to 6639, inclusive, of the First Division of the National Railroad Adjustment Board had not been rendered, and as though no agreements had been entered into between defendant carriers and the Brotherhood of Railroad Trainmen implementing said Awards and enforcing the same.

" 'It is further ordered, adjudged and decreed that defendants are not restrained and enjoined from pursuing any remedies they may have under the Railway Labor Act.' "

In *Nord* v. *Griffin*, 86 F. 2d 481 (1936), cert. den. 300 U. S. 673, the Seventh Circuit discussed the requirement that notice must be given as provided in the Railway Labor Act (45 U. S. C. A. 153 First (j)), and said:

"The trial below and this appeal do not involve the merits of the controversy. They involve solely the question of whether the appellee is to be bound by an order of an administrative board in a proceeding to which he was not a party, entered at a hearing of which he had no notice. The mere statement of the proposition is conclusive of its unsoundness. The rights of plaintiff are protected by the Fifth Amendment."

The same court in a powerful opinion in *Hunter* v. *A., T. & S. F. Ry. Co.*, 171 F. 2d 594 (1948), cert. den. *Shepherd et al.* v. *Hunter*, 337 U. S. 916, again declared this to be the law. In the brief which respondent Santa Fe filed in the Supreme Court in opposition to the petition for certiorari in *Shepherd* v. *Hunter*, docket 705, October Term, 1948, the Findings of Fact and Conclusions of Law of the District Court in the present case were included as an appendix.

CONCLUSION.

In sustaining the judgment of the District Court, the Eighth Circuit relied on the only two cases in which the basic question presented here was at issue, *Nord* v. *Griffin*, and *Hunter* v. *A., T. & S. F. Ry. Co.* In both, certiorari was denied.

These three cases, *Nord* v. *Griffin*, *Hunter* v. *A., T. & S. F. Ry. Co.*, and *B. of R. T.* v. *Templeton et al.*, present a composite picture of the law and no other citations are pertinent nor are any other needed to enable this Court to see that the decision below is clearly right. Thus, there is no conflict between the Courts of Appeals. They are in accord.

The judgment of the trial court places the parties in the same position as they were before the void awards were rendered, and by its terms invites the parties to avail themselves of any remedies they may have under the Railway Labor Act (R. 639).

These respondents respectfully pray that the writ be denied.

Respectfully submitted,

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August 14, 1950.

AUG 23 1
CHARLES ELMORE

IN THE

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BRIEF OF HAROLD H. TEMPLETON, PLAINTIFF-RESPONDENT, IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI AND IN OPPOSITION TO THE BRIEF SUPPORTING SAID PETITION.

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INDEX

Opinion Below 1
Jurisdiction 2
Statement 2

Argument—

I. Petitioner contends that even if the awards of the National Railroad Adjustment Board were void as to respondent Templeton and other joint messenger-baggagemen similarly affected as being in violation of the notice provision of the Railway Labor Act, 45 U. S. C., Sec. 153 First (j), and of the due process clause of the Fifth Amendment of the Constitution of the United States, the so-called memorandum agreements to put the awards into effect are binding on the joint service men affected 4

II. This case does not present a jurisdictional labor dispute and the courts have not interpreted or applied collective agreements 10

III. There is no conflict between the decision of the Court of Appeals and the applicable decisions of this Court on the question of the jurisdiction of a federal court to determine the craft classification of employees of a railroad carrier. That question is not involved in the present cause and the cases cited by petitioner are not in point 17

IV. Petitioner's question of the Court's jurisdiction to determine the validity of the awards is not supported by the applicable law and the cases cited are not in point 19

V. Both the District Court and the Circuit Court of Appeals have properly ruled that under the facts and applicable law the jurisdictional amount has been proved 21

Conclusion 22

CASES CITED

General Committee vs. M-K-T Railroad, 320 U. S. 323, 64 S. Ct. 146 12

Glenwood Light and Water Co. vs. Mutual Light, Heat and P. Co., 239 U. S. 121, 36 S. Ct. 30 21

O. R. C. vs. Pitney, 326 U. S. 561, 66 S. Ct. 322 10

Hunter et al. vs. A., T. & S. F. Ry. Co. et al., 78 F. Supp. 982, 171 F. 2d 594, certiorari denied Shepherd vs. Hunter, 327 U. S. 916 ..... 13, 17

Lion Bonding and Surety Co. vs. Karatz, 262 U. S. 77, 43 S. Ct. 480 21

Nord vs. Griffin, 86 F. 2d 481, certiorari denied 300 U. S. 673, 57 S. Ct. 612 ..... 17, 21

Scott vs. Donald, 165 U. S. 107, 17 S. Ct. 262 21

Steele vs. Louisville and Nashville Railroad Company, Brotherhood of Locomotive Firemen & Enginemen et al., 323 U. S. 192 20

Switchmen's Union et al. vs. National Mediation Board, 320 U. S. 297, 64 S. Ct. 95 11

Troy Bank vs. G. A. Whitehead & Co., 222 U. S. 39, 41, 56 L. Ed. 81, 82, 32 Sup. Ct. Rep. 9 21

STATUTES AND TEXTS CITED

Fifth Amendment, Constitution of United States 4

2 Moore's Federal Practice 2241-2245 21

Railway Labor Act, 45 U. S. C., Sec. 153 First (j) 4, 17

Railway Labor Act, Section 3, first (i) 12

Railway Labor Act, Section 3, First (e) 18

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527. The District Court's Findings of Fact and Conclusions of Law (R. 63-76) are reported in 84 F. Supp. 162.

JURISDICTION.

Petitioner has set forth the jurisdictional requirements.

STATEMENT.

Petitioner's statement does not accurately state the facts. Therefore, respondent submits an additional statement.

Petitioner, the B. of R.T. now claims that it is the collective bargaining representative for trainmen employees of the railroad carriers holding seniority with the said carriers as brakemen only. Petitioner claims that it is the collective bargaining representative only for baggagemen holding seniority as brakemen. The respondents are Harold H. Templeton who brought this suit June 26, 1946 (R. 1), for himself and others similarly situated and the defendant respondent railroad carriers, The Atchison, Topeka & Santa Fe Railroad Company, a corporation, and The Panhandle and Santa Fe Railway Company, a corporation.

With respect to their Express Agency employment, plaintiff and the class of employees he represents who are similarly situated have a collective bargaining agreement negotiated in their behalf by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, a voluntary unincorporated association and labor union, which has no collective bargaining agreement with the said railroad carriers with respect to road or train baggagemen or the work comprising train baggage service. Petitioner contends that respondent Templeton

and the other joint messenger-baggagemen do not have any collective bargaining agreement with the Carrier while doing the Carrier's baggage work. The respondent Templeton knows of no bargaining agreement in existence covering train baggage work for the Carriers but claims that petitioner, the recognized bargaining representative for both brakemen and train baggagemen, because of its failure and refusal to negotiate bargaining agreements with the said Carriers in behalf of train baggagemen, has discriminated against this respondent and others similarly situated.

ARGUMENT.

I.

Petitioner contends that even if the awards of the National Railroad Adjustment Board were void as to respondent Templeton and other joint messenger-baggagemen similarly affected as being in violation of the notice provision of the Railway Labor Act, 45 U. S. C., Sec. 153 First (j), and of the due process clause of the Fifth Amendment of the Constitution of the United States, the so-called memorandum agreements to put the awards into effect are binding on the joint service men affected.

The petitioner now represents that those memorandum agreements have nothing whatever to do with the awards and are to be considered as voluntary changes in the brakemen's bargaining agreement fixing rights *in futuro*. However, taking all of the said memorandum agreements, B. of R.T. Exhibits 1 to 5, inclusive, considered together, their entire effect is to implement and apply the awards as made even to determining exactly how the penalties assessed thereby shall be distributed to brakemen. Petitioner now contends that its statutory bargaining representative power to negotiate changes in bargaining agreements in behalf of the craft of brakemen which it earnestly represents is being limited and impaired by the courts. It says nothing of its statutory power and duty to represent train baggagemen.

But with respect to appellant's contention that the Santa Fe entered into the letter Agreements of its own choice and free will and accord and without reference to the Awards in question and that the memorandum agree-

ments were not in actuality a method arrived at between the Santa Fe and the B. of R.T. to implement and apply the awards the testimony of Frank W. Coyle, Vice-President of the Brotherhood of Railroad Trainmen, who with S. C. Kirkpatrick for the Santa Fe negotiated the said agreements is enlightening. At R. 556-557:

> Mr. Downs: I am talking about National (Adjustment Board Awards) 6635-36-37-38-39, and they are marked as exhibits in this case.
>
> Q. (By Mr. Downs) Are you familiar with those?
>
> A. Yes, I am.
>
> Q. Those are the ones I am talking about. Now, I asked you had those decisions or awards of the Board been made at the time you discussed these matters with Mr. Kirkpatrick?
>
> A. Yes, sir.
>
> Q. Were those part of those questions that you took up?
>
> A. Yes, sir.
>
> Q. And those came under the classification C they referred to then as "cases which have been presented to the Board, decisions have been made but have not yet been applied"? (B. of R.T. Ex. 1.)
>
> A. Yes, sir, that is right.
>
> Q. So what do you mean by applied with respect to those awards?
>
> A. To carry out the principle and intent of the award.
>
> Q. Well, the awards amount to an order, do they not?
>
> A. Well, they are a decision of a tribunal set up under the Railway Labor Act.
>
> Q. All right. So you and Mr. Kirkpatrick had certain discussions with regard to those particular five awards?
>
> A. Yes, sir.

Q. And on the basis of those awards you arrived at those certain memorandum agreements?
A. Yes, sir.

At R. 558:

Q. (By Mr. Downs) Well, the agreements that were worked out between yourself and Mr. Kirkpatrick did in effect apply the awards, did they not?
A. Well, yes and no. They went farther than the awards in some cases, went beyond the awards. In some cases we didn't apply the awards in full. It was just a mutual, amicable settlement of the entire matter.
Q. Can you tell us, Mr. Coyle, you did not apply the full award?
A. In the case just mentioned a while ago where, as I recall, the award said there should be a train-baggageman of the rank of brakeman in all trains handling baggage for the purpose of handling that baggage, and we agreed in our settlement that on certain type trains the brakeman who was already assigned to that job, his services could be utilized to handle the baggage, so when the award called for a baggageman on there, we didn't insist on that.
Q. By "baggageman" you mean an exclusive baggageman?
A. That is right.
Q. Then what you did was make arrangements for a brakeman to also handle baggage; he continued handling his brakeman's duties and also handled baggage in addition?
A. We made it possible, yes, sir.
Q. And he also received additional pay for the baggage work?
A. That is right, sir.

At R. 560:

Q. Now, what other changes in the Awards did these Memorandum Agreements make?

A. That is about all that I recall right now.

(fol. 292:)

Q. Then the only change that you can point to now is arriving at a rate of pay for a brakeman-baggageman, is that right?

A. That was one of the things, yes, sir.

Q. Well, what else?

A. Well, there is much more in the agreements.

Q. What else in the agreement changed the Awards?

A. The agreements carried out the principles of the Award.

Q. In all respects, isn't that true?

A. Here is the agreement of April 27th which covers five and a half or six pages. The entire agreement has reference to the principle and the mechanics set up to carry out the awards.

At R. 561:

Q. Yes. Well, are you familiar with Article 23 of the general rules?

A. I don't recall it by that designation.

Q. I will read it to you here. Paragraph A. "All vacancies occurring in baggage runs not controlled by joint service shall be filled from the ranks of eligible and competent brakemen, oldest brakeman to have preference in all extra or special runs or excursions."

A. No, I don't think I am. I don't think I have had any cases under that.

Q. You are familiar with the second paragraph B, "When a brakeman is required to take charge of or handle baggage, regular or extra brakemen shall perform the service, oldest man to have the preference."

A. Never had occasion to handle that rule at all, no, sir, so I am not familiar with its application.

Q. Are you familiar with the fact that the agreement did not provide for brakemen taking jobs that were not controlled by joint service?

A. I never handled a case on the Santa Fe Railroad involving that rule.

Q. I see. So although you are not familiar with the rule, never-the-less when you got together with Mr. Kirkpatrick, it was your firm purpose to put these rules into effect?

Mr. Murphy: That is objected to as being wholly immaterial; the rules and the contract speak for themselves.

The Court: Overruled.

Q. (By Mr. Downs) What was your answer?

A. It was my purpose to dispose of the unsettled cases based on the schedule of rules in effect.

At R. 565:

The Court: You didn't intend by those agreements between you and Mr. Kirkpatrick to change any existing agreements?

The Witness: Oh, no, we did not.

At R. 574:

Q. Mr. Coyle, would you mind confining yourself to my question. I am asking you about the time when you met with Mr. Kirkpatrick in January of 1944. What was your position then with reference to the handling of baggage on the Santa Fe Trains?

A. I think I answered that by saying it was our position that the work of handling baggage properly belonged to train service employees.

Q. What do you mean by train service employees?

A. Brakemen.

At R. 575:

Q. What was your position with reference to who was going to handle baggage on the Santa Fe Trains?

A. I took the position under the scheduled rules that it belonged to the brakemen.

Q. And you took that position under the scheduled rules?

A. Yes, sir.

Q. Not under the Awards?

A. We referred to the awards in our discussions, yes.

Q. But wasn't the matter that you were discussing with Mr. Kirkpatrick the application of those awards?

A. It was the application of scheduled rules and of course the awards were used to support our position.

Appellant contends that only awards 6635 and 6636 displaced express messenger-train baggagemen. Actually award 6636 did the job completely because of the Board's upholding its claim 1. That "The handling of baggage on any and all the carrier's trains is service that properly belongs to trainmen holding seniority as brakemen." However, all of the awards decided on April 20, 1942, being 6635-6639, inclusive, were based on award 143 decided February 28, 1935. All of the awards were in violation of the clear, express provisions of Article XXIII of the Schedule Rules in force—Trainmen's bargaining agreement for the Eastern and Western Lines (Santa Fe Exhibit 4). Articles XXIII and XXIX were the only two sections of the agreement that were material to the claims that precipitated the respective awards and those same sections which the Board was asked to interpret but which it actually changed were the basis of all of said claims and awards including award 143. In the entire bargaining agreement only Article XXIII made any reference to "joint service." In its ruling that Statement of Claim 1 should be sustained the Adjustment Board breached and violated the terms and provisions of the said bargaining agreement and in legal effect changed that contract thereby acting beyond its jurisdictional authorization and in clear violation of

the Railway Labor Act. Hence, irrespective of the due process theory, all of the awards are most certainly void because of the Board's action which was beyond its authority and in violation of law. Contrary to Appellant's insistent contentions that Article XXII has something to do with the issues in this case the B. of R.T. made no such contention in presenting its claims to the Board and actually that section has no bearing on the matter and contains nothing that in the remotest way relates to joint service or even baggage service.

II.

This case does not present a jurisdictional labor dispute and the courts have not interpreted or applied collective agreements.

The facts in this case do not present a jurisdictional dispute although that is what petitioner contends and that jurisdiction rests exclusively in the Railroad Adjustment Board. There are no conflicting agreements between the railroad carriers and different labor organizations. There is only one contract involved—that between the Santa Fe and the Brotherhood of Railroad Trainmen. There are no intricate and technical questions of fact. Furthermore, the matter has been referred to the Railroad Adjustment Board and it has acted arbitrarily and wrongfully and on a misstatement of facts presented by petitioner. It now appears that equitable relief is necessary in order to assure compliance with the Railway Labor Act. The cases cited by petitioner do not support its contention.

Petitioner cites *O. R. C.* v. *Pitney,* 326 U. S. 561, 66 S. Ct. 322, as authority for the proposition that the District Court was without jurisdiction. The case does not so hold and is not in point on the facts. In the Pitney case the court was dealing with two questions: (1) The control

which the Court should exercise over trustees appointed under the Bankruptcy Act; and (2) a jurisdictional dispute between different labor organizations. The railroad had entered into collective bargaining contracts with both O. R. C. and B. of R.T., which were claimed to be conflicting and overlapping. Suit was brought by the O. R. C. without any of the parties having first gone either to the Adjustment Board or Mediation Board. The Court found that each of the collective bargaining agreements had to be considered in the light of the other, together with the evidence as to usage, practice, and custom, and that the factual question was intricate and technical. It, therefore, held that the matter should first be referred to the Agency especially competent and specifically designated by Congress to deal with such matters. However, in so holding, the Court said (page 567) that that agency should have the first opportunity to pass on the issue, and that the extraordinary relief of an injunction should be withheld until it had done so. "Only after the Adjustment Board acts, but not until then, can it plainly appear that such relief is necessary to insure compliance with statute." That the Pitney case does not deprive this Court of jurisdiction is conclusively shown by the statement on page 566:

> "Of course, where the statute is so obviously violated that 'a sacrifice or obliteration of a right which Congress * * * created' to protect the interest of individuals or the public is clearly shown, a court of equity could, in a proper case, intervene."

Petitioner also relies on *Switchmen's Union et al.* v. *National Mediation Board*, 320 U. S. 297, 64 S. Ct. 95, but that case is in no way controlling. It involved only the question as to whether the B. of R.T. or the Switchmen's Union was the proper representative of a certain group of

employees; and the Court properly held that such a dispute could be handled only by the Mediation Board, in view of the provisions of the Railway Labor Act. This case does not involve such a jurisdictional dispute.

The case of *General Committee* v. *M-K-T Railroad*, 320 U. S. 323, 64 S. Ct. 146, was a companion case to the Switchmen's Union case, involving a jurisdictional dispute concerning the authority of two railroad brotherhoods to represent a certain group of employees. The court again held that such a dispute had to be referred to the Mediation Board. The controversy in that case (pp. 334-335) involved "a jurisdictional dispute—an asserted overlapping of interests of two crafts" and necessitated a determination of the point where the authority of one ended and the other began, or of the zones where there was joint authority. No such questions are presented in the present case.

The essential differences between the above authorities and the present case are that there are no conflicting or overlapping collective bargaining agreements; there is no dispute between collective bargaining agents, there is no question of representation of a class or craft; and it affirmatively appears that judicial intervention is necessary to protect the rights of the parties—the Adjustment Board having previously violated the Railway Labor Act in issuing the awards.

Petitioner contends that (R. 74, 75) the District Court did not have jurisdiction to determine that the National Railroad Adjustment Board, First Division, acted beyond and in excess of its jurisdiction as defined in Section 3, first (i) of the Railway Labor Act on the theory that insofar as the Board allegedly "adjudicated" in Awards 6636 to 6639, inclusive, "that Trainmen are entitled to

handle baggage on any and all trains of the Santa Fe and that such work belongs to Trainmen holding seniority as Brakemen, to the exclusion of employees of the Santa Fe in 'joint service' " (R. 75), the Board also did not premise same "on any existing agreement between the Santa Fe and Trainmen," but, in "legal effect," made a new and different contract between those parties.

An identical situation is presented in *Hunter et al.* v. *A., T. & S. F. Ry. Co. et al.*, 78 F. Supp. 982, 171 F. 2d 594, certiorari denied *Shepherd* v. *Hunter*, 327 U. S. 916, which involved Award 6640 referred to in B. of R.T. Exs. 1 to 5, inclusive, wherein the Court said:

> "That the contract between the brakemen and the carrier which the Board purported to interpret and apply is free from ambiguity can hardly be doubted. * * * the Brotherhood of Railroad Trainmen on behalf of the brakemen negotiated a schedule agreement with the Santa Fe effective December 1, 1926, and it is by reason of the interpretation which the Board places upon this agreement that the disputed work has been awarded to the brakemen. In doing so it does not mention and appears to have ignored entirely the following provision of the 1926 agreement:
>
> > 'The term "Trainman" or "Trainmen," as used in this agreement, is understood to mean freight and passenger Brakemen, and Baggagemen, with the further understanding that this definition does not change, alter or extend present application of these rules to baggagemen or train porters.'
>
> "While other provisions of the agreement may furnish a feeble basis for the contention that the brakemen under this contract were entitled to the disputed work, the provision of the agreement which we have just quoted leaves no room for doubt that such agreement was not to extend to the work, then

being performed by the porters. *In reality, what the board did was not merely to exercise its statutory authority to interpret and apply the contract as it existed but to make a new and different contract between the brakemen and the carrier.*"

The only question involved in the claims filed by the B. of R.T. with the Adjustment Board, which resulted in Awards 6635-6639, inclusive, was that of the interpretation or application of Articles XXIII and XXIX, of the Eastern and Western Lines Contract between B. of R.T. and the Santa Fe.

Claims resulting in Awards 6635, 6637, 6638, and 6639 were limited to particular trains. One of the claims in Award 6636 was, "1. The handling of baggage on any and all of the carrier's trains is service that properly belongs to trainmen holding seniority as brakemen." The only finding made by the Adjustment Board in sustaining this claim was "For the reasons stated in the findings contained in Docket 7684, Award 6635, the protest and claims, one, two and three should be sustained * * *."

The claim involved in Award 6635 was limited to the handling of baggage on Trains 3 and 4; and the finding made by the Board in sustaining that claim was that the record disclosed "that persons other than those *having seniority as baggagemen* performed services in derogation of claimant's seniority rights" and that the carrier could not invoke the joint service rule contained in Article XXIII of the agreement when it created the vacancies relied upon for the invocation of the rule. The Board further found that Award 143 was applicable.

Award 143 involved a claim for twelve baggagemen on the same trains, 3 and 4, four of whom had no seniority as brakemen and eight of whom held seniority designated

in the B. of R.T. statement of claim as "*trainmen seniority.*" The claim was sustained and the award was that the carrier should use train service employees to perform that particular baggage work.

The various rulings of the Board, as above quoted, show their own inconsistencies. In Award 143, the Board was dealing with four men who had *seniority as baggagemen* only and eight men who had *seniority as trainmen,* and yet in Award 6635 it said that Award 143 was applicable; at the same time saying that persons other than those having *seniority as baggagemen* had performed services in derogation of the claimant's rights. Both these awards, while inconsistent with each other and with the provisions of the contract were limited to Trains 3 and 4; and presumably were decided upon the peculiar facts applicable to those two trains. However, in the claim involved in Award 6636, which involved the handling of baggage on *all trains,* the Board said that the claim should be sustained for the same reasons as those given for the sustaining of the claim in Award 6635.

Awards 6637, 6638, and 6639 likewise were issued for the reasons stated in Award 6635.

The facts relied on by the Board in the findings in Awards 143 and 6635 were not applicable to *all* trains and, therefore, Awards 6636 to 6639, inclusive, were not supported by the findings. The Board invented and relied on a seniority classification of "baggagemen." There is no provision in the contract providing for seniority for "baggagemen." Where in the Railway Labor Act did the First Division of the Board find the authority to create a job classification, and then create seniority rights for persons in that classification?

Article XXIX provides against change, alteration or extension of the "present application of these rules to baggagemen." The contract has been effective since December 1, 1926. Baggage was then being handled by joint service men and had been so handled for some forty years. By Articles XXIII and XXIX of the contract Santa Fe and B. of R.T. agreed to the continuation of the joint service arrangement, but the Board took these clauses out of the contract, destroyed joint service, and said in Award 6636 that *brakemen only* were to be used to handle baggage on all trains.

The power of the Adjustment Board is specifically limited by Section 153(i) to the interpretation or application of agreements. It is given no authority whatever to change existing agreements or to make contracts for the parties or to write seniority provisions into a contract. This is a power which has never been conferred even upon any court. The action of the Board, therefore, in deleting two clauses from the contract and substituting those of its own creation therefor, was without statutory sanction and is void.

Therefore, under the authority stated in the *Pitney case* at page 566 a court of equity could intervene where as in the case at bar the statute is so obviously violated.

The Court of Appeals properly found that the findings and conclusions of the trial court are justified. The so-called Memorandum Agreements and petitioner's Vice-President Coyle's testimony considered with petitioner's claims which resulted in the Awards aforesaid clearly demonstrate the shifting inconsistencies of petitioner's position in this case.

III.

There is no conflict between the decision of the Court of Appeals and the applicable decisions of this Court on the question of the jurisdiction of a federal court to determine the craft classification of employees of a railroad carrier. That question is not involved in the present cause and the cases cited by petitioner are not in point.

Respondent Templeton and other joint messenger-baggagemen were in train baggage service on the Santa Fe when petitioner filed claims for such employment with the Railroad Adjustment Board in behalf of brakemen. Inasmuch as respondent Templeton and the class he represents in this action were in fact train baggagemen employees of the Santa Fe at the time of hearings on such grievance claims of petitioner they were "involved" in such disputes within the meaning of Section 153(j). The undisputed evidence shows that they received no notice, either actual or constructive, of the pendency of the proceedings. They were, therefore, deprived of property rights within the meaning of the Fifth Amendment to the Constitution, without due process of law; and the awards of the Adjustment Board are, therefore, void. *Nord* v. *Griffin*, 86 F. 2d 481, certiorari denied 300 U. S. 673, 57 S. Ct. 612; *Hunter* v. *A., T. & S. F. Ry. Co.*, 78 F. Supp. 982, 171 F. 2d 594, certiorari denied *Shepherd* v. *Hunter*, 327 U. S. 916.

The courts found that the plaintiff and members of the class of messenger-baggagemen while in joint service on the Santa Fe were employees of the Santa Fe and that "as such employees, they are and were "Trainmen" within the purview of Section 3 (h) (Title 45, U. S. C. A. 153 (j)) of the Railway Labor Act, and entitled to due notice and to be heard in the disputes and proceedings resulting in Awards 6635, 6636, 6637, 6638 and 6639 (Pltf's. Exs. B, C,

D, E and F) (R. 130-285) before the National Railroad Adjustment Board, First Division, in that their employment as "train baggagemen" with the Santa Fe, was directly determined and affected in said proceedings and that therefore said Awards are illegal and void and in violation of the Fifth Amendment to the Constitution of the United States, and that said awards are also void in that in deciding that brakemen are exclusively entitled to handle baggage on any and all trains of the Santa Fe, the National Railroad Adjustment Board did not interpret any existing agreement between the B. of R.T. and the Santa Fe, but in legal effect made a new and different agreement and contract between the two, which action was beyond the authority and jurisdiction of the First Division, as defined in Section 3, First (e) of the Railway Labor Act (Conclusion of Law (8) (R. 75)), and that the letter agreements (B. of R.T. Exs. 1 to 5, inclusive) entered into between the petitioner B. of R.T. and the respondent Santa Fe, implemented and gave legal effect and enforcement to said void awards are likewise illegal and void (conclusions (9) (2) and (9) (3) (R. 75-76)).

Joint messenger-baggagemen, with respect to their Express Agency employment only, are, for collective bargaining purposes, represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees. Nothing concerning Express Agency employment is involved in the present action.

A determination of whether or not the Awards of the Railroad Adjustment Board involved in this cause are void is not predicated on a determination of the craft classification of express messenger-train baggagemen in joint service. The respective crafts have long been established and recognized by all concerned. Such joint service has long been established and recognized by all concerned.

The Railroad Adjustment Board ignored the Santa Fe's contention that joint-service train-baggagemen were parties involved in the respective disputes. The mere fact that train-baggagemen employees of the Santa Fe were also doing other work for the Express Agency under written contracts and agreements does not permit or authorize petitioner to require the said joint service employees to choose or accept a single craft classification. The inconsistency of such a theory on the part of petitioner is amply demonstrated by petitioner's statements and agreements incorporated in the Memorandum Agreement of April 27, 1944 (B. of R.T. Exhibit 5) providing, among other things, for joint brakeman-baggageman employment for brakemen members of the Brotherhood of Railroad Trainmen. Also, the Interstate Commerce Commission has made numerous classifications of railroad carrier employees among which are those of brakeman, train or road baggageman and express messenger and they also define and describe what is commonly known as joint service or joint employment.

IV.

Petitioner's question of the Court's jurisdiction to determine the validity of the Awards is not supported by the applicable law and the cases cited are not in point.

There is no conflict between the decision of the Court of Appeals in this case and other applicable decisions in this Court. The Awards did sustain the petitioner's interpretation of its bargaining agreement with the railroad carriers. However, petitioner's said claims to exclusive right to do the Santa Fe train baggage work were based on false premises and deliberate misrepresentations of the then existing written agreement.

Petitioner, in its Statement of Claim to Award 6636 said (R. 181):

> "Subsequent to January 14, 1940, the baggage work performed by trainmen assigned as baggagemen has been turned over to *express messengers, who are also employees of the A., T. & S. F. Railway Company.*"

And in the same award, in its position of Employees, B. of R.T. said:

> "* * * That the employees who were actually handling the baggage (such as express messengers, barbers, buffet car porters, and news agents) were actually employees of the The A., T. and S. F. Railway Company."

And, on the same page appears this paragraph:

> "In other words, the so-called 'joint Employees,' classified as express messengers, who have supplanted the carrier's employees classified as train baggagemen, are, in fact, employees of the carrier, and are paid exclusively out of the funds of the carrier. Therefore, they are not Joint Employees."

Now the B. of R.T. takes the position that plaintiff and his class were not employees of the Santa Fe. They must have been working for the Santa Fe while in joint service and classified as train baggagemen otherwise the Santa Fe would not have supervised, directed and controlled that work and would not have been able to remove them from joint service on September 15, 1945, or the awards would have been void for still another reason.

In *Steele* v. *Louisville and Nashville Railroad Company, Brotherhood of Locomotive Firemen & Enginemen et al.*, 323 U. S. 192, at pages 193-194, Chief Justice Stone stated:

> *"The question is whether the Railway Labor Act imposes on a labor organization, acting by authority of the statute as the exclusive bargaining representative of a craft or class of railway employees, the duty*

to represent all the employees in the craft without discrimination * * * and, if so, whether the courts have jurisdiction to protect the minority of the craft or class from the violation of such obligation."

V.

Both the District Court and the Circuit Court of Appeals have properly ruled that under the facts and applicable law the jurisdictional amount has been proved.

Petitioner relies on *Lion Bonding and Surety Co.* v. *Karatz,* 262 U. S. 77, 43 S. Ct. 480. This case is not in point on the facts and is not of any assistance in determining the statutory jurisdictional amount requirement. It involves a suit on a debt amounting to $2,100.00.

In that case the Court cited *Troy Bank* v. *G. A. Whitehead & Co.,* 222 U. S. 39, 41, 56 L. Ed. 81, 82, 32 Sup. Ct. Rep. 9, the theory of which respondent contends is applicable in this case. Respondents' theory is amply supported by *Nord* v. *Griffin,* 86 F. 2d 481, 483; *Scott* v. *Donald,* 165 U. S. 107, 17 S. Ct. 262 and *Glenwood Light and Water Co.* v. *Mutual Light, Heat and P. Co.,* 239 U. S. 121, 36 S. Ct. 30.

This civil action seeking equitable relief for respondent and others similarly situated is not an example of the so-called "spurious" class action discussed in 2 Moore's Federal Practice 2241-2245 which, as Professor Moore points out, is but a means of joinder, without bringing all the parties before the Court, where there is no real connection between them, and hence the amounts in controversy may not be aggregated to make up the jurisdictional amount required.

Petitioner is the recognized collective bargaining representative for all brakemen and train or road baggagemen on the property of the respondent carriers, and if respondent